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MEMORANDUM FOR THE RECORD

SUBJECT: Senate Foreign Relations Committee Hearing on S. 2776

1. On 7 October 1988, the Senate Foreign Relations Committee held a hearing on S. 2776, the "Antiterrorism and Arms Export Amendments Act of 1988." S. 2776, cosponsored by Senators Kerry and Lugar, is the Senate companion to H.R. 3651 that, in turn, was cosponsored by Representative Hyde and Berman and passed by the House in the spring of 1988.

2. Senators present at the hearing included: Committee Chairman Pell and Committee Members Kerry, Simon, Helms, Murkowski, Pressler and Adams.

Berman & Hyde Testimony

3. Representatives Berman and Hyde appeared and testified in support of the bill. They were followed by a representative from the Department of State, Ambassador at Large for Counterterrorism, L. Paul Bremer, III, and an unidentified representative from the Department of Justice both of whom also testified in support of the bill.

4. Chairman Pell opened with a very brief statement, inserted into the record a letter from House Foreign Affairs Committee Chairman Fascell and then turned the chair over to Senator Kerry. Kerry noted that the Senate version of the bill had inadvertently omitted a provision that allows the President to utilize the Section 614A waiver authority under Section 40 of the Foreign Relations Act. He said this would be reinserted prior to final Senate action.

5. Representatives Berman and Hyde then inserted their full statements into the record and briefly summarized them. Their remarks were not controversial.

6. Kerry asked if the bill contained a definition of "terrorism." Berman said it did not: That was left up to the Executive Branch. Kerry then noted that the Departments of State, Commerce and Defense had been consulted as well as the Central Intelligence Agency. Kerry said he was particularly interested in the CIA's reaction. Hyde and Berman noted the numerous staff and principals' meetings between the Executive and Legislative Branches and noted that, growing out of those meetings, a provision amending the National Security Act had been dropped. Kerry immediately focused on this. Berman explained that the issue had been resolved by drawing upon existing law, the other provisions in the bill and a colloquy that took place on the House floor during consideration of the bill (the Stokes-Fascell colloquy). Hyde noted that the bill did not limit Presidential authority but clarified the law.

7. Kerry then discussed the "exceptional circumstances" waiver authority and asked for explanations. Both Berman and Hyde gave general explanations that seemed to satisfy Kerry.

8. Senator Helms then asked questions having to do with the labeling of particular countries as "terrorist countries." He was dissatisfied with giving the Secretary of State discretion to denominate a country as a terrorist country. His dissatisfaction, however, did not lead him to oppose the bill.

9. Senator Simon then made some innocuous comments.

10. Senator Adams had a technical question on whether the Department of Justice would be able to prosecute under the bill a scheme that involved an apparently lawful shipment of U.S. arms to one country that was really part of a scheme to transfer non-U.S. arms to a third country that was a terrorist country. Hyde and Berman promised they would attempt to answer it for the record by the close of business that day.

11. Hyde concluded with a statement to the effect that if the bill was to pass at all this year, no changes could be made to it.

Executive Branch Testimony

12. Ambassador Bremer and the unidentified Department of Justice representative then testified. Bremer inserted his prepared remarks into the record, made a brief statement in support of the bill and then took questions. Senator Kerry asked if Bremer wanted any changes in the bill. Bremer said no. The Justice representative said he would prefer that the provision for mandatory prosecution in certain circumstances be

amended to allow for some discretion. Kerry asked if the bill broadened Executive Branch discretion: Bremer said no.

13. The hearing then concluded with an apparent desire for the Committee to quickly report out the bill to the full Senate for possible action.

14. Subsequent conversations with House staff indicate that this remains a possibility. They have no indication that the Senate will make any changes in the bill or write a report that would raise any issues of concern.



OCA/LEG [redacted] (11 October 1988)

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